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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/039,202	03/13/1998	DAVID ROBERT WESTON	GIL4-BC72	9300
21611	7590	05/10/2004	EXAMINER	
SNELL & WILMER LLP 1920 MAIN STREET SUITE 1200 IRVINE, CA 92614-7230			SALCE, JASON P	
			ART UNIT	PAPER NUMBER
			2611	26

DATE MAILED: 05/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/039,202

Applicant(s)

WESTON ET AL.

Examiner

Jason P Salce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3 and 5-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 3 and 5-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 3 and 5-13 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 3, 5, 7-8 and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lyons et al. (U.S. Patent No. 5,621,463) in view of Acampora et al. (U.S. Patent No. 5,729,292).

Referring to claim 8, Lyons discloses providing services in conjunction with a TV broadcast system (see Column 2, Lines 57-64), wherein data relating to a number of different categories of services (video, audio and closed caption data) are transmitted in conjunction with a TV broadcast signal (satellite TV program) from a central location to a number of remote receivers (see Column 3, Lines 10-12).

Lyons also discloses allocating a priority to the data to be transmitted in accordance with its category (see Column 6, Lines 52-67 and Column 7, Lines 1-30 for allocating a priority (in the form of a priority list) to the data to be transmitted in accordance with its category (audio, video, CC and PCR or scrambling key data)), the priorities defining a relationship between the different categories of data (note that

priority list 1 contains only video, which places video data (in order of the priority list) into the first packet slot to be transmitted and so on for priority lists 2, 3, M, etc.).

Lyons also discloses transmitting the data in a manner determined by the allocated priorities (see again Column 3, Lines 8-12 and also note Column 8, Lines 15-16).

Lyons fails to teach that while the data is being transmitted, monitoring at the central location the data remaining to be transmitted to determine whether the remaining data will be transmitted within a satisfactory predetermined time period and if any of the remaining data will not be transmitted within the predetermined time period, changing the priority of the remaining data so that it will be transmitted within the predetermined time period. As disclosed by Lyons, only a single priority list for each component (audio, video, closed captions, etc.) is provided.

Acampora of the same assignee, and as shown by the disclosure of each invention, is within the same system. However, Acampora discloses the improvement of adding additional priority lists B (see Figure 2) and a data collector 40 (see Figure 1). Under control of the microprocessor 50, a data collector 40 analyzes the data being output by the packet generator 10. The data collector 40 analyzes the throughput of these component signal sources and sends these statistics to the microprocessor 50. If the data rate from a component signal source drops, then the identifier of that component signal may be moved lower in its packet slot priority list, leaving room for other component signals requiring a higher throughput rate to be transmitted (inherently) within a satisfactory period of time (see Column 6, Lines 20-58).

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At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the system of Lyons, to include the data collector 40, as taught by Acampora, for the purpose of accommodating the increasing rate of a specific component signal source (audio, video, etc.) (see Column 6, Lines 56-58 of Acampora).

Referring to claim 10, see rejection of claim 8.

Claim 3 corresponds to claim 8, where Lyons discloses that prior to transmission the incoming component source signals are in compressed MPEG form (see Column 2, Lines 56-57).

Claim 5 corresponds to claim 8, where Acampora teaches dividing a packet into different packet slots, where each packet slot has a corresponding priority list (see Column 3, Lines 40-43 and Column 3, Lines 59-61), where these lists are scanned according to priority, in order to find an entry that contains sufficient data to form a packet (see Column 4, Lines 26-29). Also note Column 4, Lines 38-45 for assigning a low data rate signal (lower priority) component a high priority, therefore lower priority data can be incorporated into packet space prior to transmission.

Claim 7 corresponds to claim 8, where Lyons discloses that said data is transmitted in conjunction with a TV broadcast signal (see Column 2, Lines 60-64 for a television signal containing a video component and a closed caption component).

Referring to claim 11, see rejection of claim 7.

Claim 12 corresponds to claim 8, where Acampora teaches that the data of each category is stored at a different address in a store, the address of the data being stored

in a pointer store in order of their priority (see Column 5, Lines 57-59), wherein the data to be transmitted is selected by obtaining the address at the location in the pointer store, corresponding to the highest priority (see Column 5, Lines 61-63).

Claim 13 corresponds to claim 12, with the additional limitation of adjusting the position in the pointer store of the address of the data whose priority is changed.

Acampora teaches this limitation by having the microprocessor 50 write data into the second list memory 24. Since the memory is being manipulated by a microprocessor, then an address (location in memory) is inherently being adjusted (written to).

3. Claims 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lyons et al. (U.S. Patent No. 5,621,463) in view of Acampora et al. (U.S. Patent No. 5,729,292) in view further view of Cash et al. (U.S. Patent No. 5,481,312).

Referring to claims 6 and 9, Lyons and Acampora disclose all the limitations in claim 8, but fail to teach the additional limitations of the categories of receiver enablement/disablement data and an interactive service. Cash teaches high and low priority data being transmitted over a television network (see Column 1, Lines 52-57), where the data can be either enablement/disablement data, or an interactive service (see Column 7, Lines 27-39 for stop, play and fast forward command, which are all interactive and enable and disable the receiver from playing a movie).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the transmitted priority data, as taught by Lyons and Acampora, to include the VCR type request data, as taught by Cash, for the purpose of allowing a user to watch the requested video at his/her leisure.

Conclusion

4. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P Salce whose telephone number is (703) 305-1824. The examiner can normally be reached on M-Th 8am-6pm (every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile can be reached on (703) 305-4380. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 25, 2004



**VIVEK SRIVASTAVA
PRIMARY EXAMINER**